Remarks

By this paper, the independent claims are amended in a *bona fide* attempt to further prosecution of the application. Commensurate with preparation of this Response, Applicant unsuccessfully attempted to conference with the Examiner regarding the substance of the amendments presented. *If, after reviewing these amendments, the Examiner entertains any reservation regarding the allowability of the claims presented, the Examiner is requested to telephone Applicant's undersigned representative to schedule an Examiner Interview to facilitate advancing prosecution of the application.*

The independent claims are amended herein to specify an instant messaging communication protocol wherein a first wireless device employs an instant messaging server to first *establish an instant messaging session* between the first wireless device and at least one other wireless device. The phrase "instant messaging session" is a well known term for a type of communication between two parties; in this case, between two wireless devices. After the instant messaging session has been established through the instant messaging server, Applicant's recited protocol (discussed further below) allows for the first wireless device to transfer the instant messaging session to a peer-to-peer communication model employing direct wireless instant messaging communication across the piconet between the first wireless device and the at least one other wireless device; that is, if the at least one other wireless device in the instant messaging session belongs to the same piconet as the first wireless device. This transferring of the instant messaging session by the first wireless device is without further employing the instant messaging server. Support for the amended independent claims can be found throughout the application as filed. For example, reference paragraph [0011] of the application. No new matter is added to the application by any amendment presented. Claims 1, 6, 7, 10, 15, 16, 17, 20, 21, 26 & 27 remain pending.

Substantively, prior claims 1, 2, 7, 8, 10, 11, 16-18, 20-22, 27 & 28 were rejected in the Office Action mailed September 7, 2006 under 35 U.S.C. §103(a) as being unpatentable over Collins et al. (U.S. Patent Publication No. 2003/00112823; hereinafter Collins) in view of Vij et al. (U.S. Patent No. 6,452,910; hereinafter Vij), while claims 6, 15 & 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over Collins in view of Vij and further in view of Jabber

(Jabber.org homepage, printed from 05 December 2000 Archive of Jabber.org; hereinafter Jabber). These rejections are respectfully traversed to any extent deemed applicable to the amended claims presented herewith.

Numerous aspects of Applicant's presented protocol are believed to patentably distinguish over the teachings of Collins and Vij, either alone or in combination. By way of example, Applicant recites (in claim 1) an instant messaging communication protocol which includes:

- connecting a first wireless device to an instant messaging server;
- transmitting device address and access code information of the first wireless device from the first wireless device to the instant messaging server;
- *employing the instant messaging server to establish an instant messaging session between the first wireless device and at least one other wireless device;*
- *subsequent to establishing of the instant messaging session, requesting by the first wireless device* a list of active wireless devices from the instant messaging server in a same piconet as the first wireless device, the piconet having a range characteristic indicative of a distance within which radio signals carry between wireless devices of the piconet using *direct connection wireless technology*;
- transferring from the instant messaging server to the first wireless device the list of active wireless devices in the same piconet as the first wireless device;
- employing by the first wireless device the list of active wireless devices in the same piconet *to identify at the first wireless device whether the at least one other wireless device in the instant messaging session belongs to the same piconet as the first wireless device*; and
- *if the at least one other wireless device in the instant messaging session belongs to the same piconet as the first wireless device, then without further employing the instant messaging server, transferring by the first wireless device the instant messaging session to a peer-to-peer communication model employing direct wireless instant messaging communication across the piconet between the first wireless device and the at least one other wireless device.*

Applicant respectfully submits that at least the above-scripted characterizations of the recited protocol patentably distinguish Applicant's invention over the teachings and suggestions of Collins and Vij.

Initially, Applicant's protocol recites *employing the instant messaging server to establish an instant messaging session* between the first wireless device and the at least one other wireless device. Thus, in Applicant's protocol an instant messaging session is first established between two wireless devices via an instant messaging server. After this, protocol is set forth for transferring by the first wireless device the instant messaging session to a peer-to-peer communication model provided that the at least one other device in the session belongs to the same piconet as the first wireless device. No similar teaching or suggestion is believed provided by Collins or Vij, either alone or in combination.

Collins describes techniques for enabling communication to be established regardless of the presence of communication blockers, e.g., firewalls and NATs, in the path between two computing devices. In this technique, the two devices separately establish communication with a rendezvous service and through the service the devices exchange control signals to set up direct, peer-to-peer communication between themselves. (See Abstract of Collins.) The devices in Collins employ the rendezvous service to provide control information in order to facilitate setting up a direct, peer-to-peer communication between themselves. There is no teaching or suggestion in Collins that an instant messaging session is established by the devices via an instant messaging server prior to, for example, requesting by the first wireless device a list of active wireless devices from the instant messaging server in the same piconet as the first wireless device. In Applicant's recited invention, there is first an establishing of an instant messaging session between the devices, which is followed by one of the devices requesting a list of active wireless devices from the instant messaging server.

Additionally, Applicant's independent claims recite that the piconet has a range characteristic indicative of a distance within which radio signals carry between wireless devices of the piconet using *direct connection wireless technology*. Because of the presence of the communications blocker 104/200 in Collins, it is respectfully submitted that Collins does *not* teach the use of *direct connection wireless technology* between personal computer 100 and personal computer 112.

More particularly, and as shown in the figures, communication path 410 travels through the firewall in Collins. Because the firewall is interposed between the devices, the devices are not part of a same piconet. As understood in the art, interposing a firewall between devices

removes the possibility that the devices can be in a same piconet, since there is no *direct* connection between the devices. In order to communicate through the firewall, one device communicates to the firewall, and then the firewall forwards the communication onto the second device, and vice versa. Further, Applicant respectfully submits that one of ordinary skill in the art would not have modified Collins to remove the firewall, since the whole point of Collins is to establish communication when there is a firewall.

As indicated by the title and Abstract, Collins is directed to processes for enabling communication to be established *regardless of the presence of communication blockers*, such as firewalls and network address translators (NATs) in the path between the two computing devices. Thus, Collins describes (throughout the application) processes for indirectly establishing communication through the blockers employing a rendezvous service. Removal of the rendezvous service from establishing of the communication between the first and second wireless devices is not possible because of the existence of the communications blocker 104/200. Further, removal of the communications blocker 104/200 from the Collins patent would render the patent meaningless, since the teachings described therein are processes for establishing communications through firewalls and network address translators (NATs).

In contrast, in Applicant's recited invention, the piconet employs *direct connection* wireless technology. The existence of the NAT/firewall between the personal computers in Collins means that there is *no direct connection* wireless technology employed to directly connect the personal computers (i.e., if communication is established, it necessarily passes through the NAT/firewall, as depicted in FIGS. 2 & 4A-4C of Collins).

Further, in Applicant's independent claims, protocol is recited for employing by the first wireless device the list of active wireless devices in the same piconet to identify at the first wireless device whether the at least one other wireless device *in the instant messaging session* (previously established) belongs to the same piconet as the first wireless device. Since there is no initial establishing of an instant messaging session in Collins or Vij, then there is no teaching or suggestion therein of employing by the first wireless device a list of active wireless devices obtained from the instant messaging server to determine whether the at least one other wireless device in the instant messaging session belongs to a same piconet as the first wireless device. In this regard, Applicant notes that paragraph [0040] of Collins discusses device 100 initiating and

establishing communication with device 112, but again, this is not the particular protocol now recited by Applicant in the independent claims. In Applicant's invention, an instant messaging session is initially established by the instant messaging server. Thus, in Applicant's invention, the devices are already in communication via the instant messaging session established through the instant messaging server.

Still further, Applicant recites that if the at least one other wireless device in the instant messaging session belongs to the same piconet as the first wireless device, *then without further employing the instant messaging server, the first wireless device transfers the instant messaging session to a peer-to-peer communication model employing direct wireless instant messaging communication across the piconet between the first wireless device and at least one other wireless device.* Although not specifically addressed as now claimed, the Office Action generally cites paragraph [0040] of Collins for teaching or suggesting Applicant's particular protocol. This characterization of Collins is respectfully traversed. Paragraph [0040] of Collins states:

> The example scenarios of FIG. 4a is not symmetric because computing device 100 is behind a communications blocker 104/200 while device 112 is not. The second scenario of FIGS. 4b and 5b shows what may happen when, opposite to the example of FIGS. 4a and 5a, device 100 invites device 112 to establish communications. The procedure begins as before in steps 500 and 502 with the two devices establishing communications with rendezvous service 400. This time, device 100 sends, via the rendezvous service, an invitation to device 112 to establish communications (steps 514 and 516). When in step 518, device 112 attempts to establish communications flow 408, its attempt fails because of the communications blocker 104/200 in front of device 100. (Note that the presence of a communications blocker need not doom this attempt to fail. The blocker may allow the communications in which case this attempt successfully establishes the communications flow as in the previous scenario. The procedures of FIG. 5b only proceeds if step 518 fails.) Device 100 becomes aware of device 112's failure. That awareness may arise when the rendezvous services uses communications flow 402 to pass on a failure message sent to it from device 112. Alternately, device 100 may time how long it takes device 112 to establish communications. If the timer goes off before communications are established, device 100 decides that device 112 failed. In any case, device 100 now attempts, in step 520, to establish communications flow 410 with device 112. Just as in the scenario of FIGS. 4a and 5a, this attempt succeeds because there is no communications blocker in front of device 112. In the parallel steps 522 and 524, devices 100 and 112 use communications flow 410 to communicate directly with one another.

A careful reading of Collins fails to teach or suggest establishing of an instant messaging session between devices, and then a particular protocol for determining whether the at least one other wireless device in the instant messaging session belongs to a same piconet as the first wireless device receiving the list of active wireless devices in the piconet from the instant messaging server.

Additionally, Applicant recites that *without further employing the instant messaging server*, transferring by the first wireless device the instant messaging session to a peer-to-peer communication model employing direct wireless instant messaging communication. Paragraph [0040] of Collins teaches the opposite. In Collins, device 100 first invites, via the rendezvous service, device 112 to establish communication. Device 112 then attempts to establish communication. If communications blocker 104/200 in front of device 100 prevents this attempt, then device 100 responds to this failure by itself attempting in step 520 to establish communication flow 410 with device 112. Thus, in Collins, the rendezvous service is employed in the communication processing protocol set forth. A careful reading of Collins fails to uncover any teaching or suggestion that if the at least one other wireless device in the instant messaging session belongs to the same piconet as the first wireless device, then without further employing the instant messaging server, transferring by the first wireless device the instant messaging session to a peer-to-peer communication model employing direct wireless instant messaging communication across the piconet. These characterizations of Applicant's above-outlined protocol are more than simply establishing direct connection between two wireless devices.

With respect to the secondary reference, the Vij patent is describing a bridge between different wireless technologies. Vij does not teach or suggest the above-noted deficiencies of Collins when applied against the independent claims presented.

The Federal Circuit has expressly mandated that functional claim language be considered in evaluating a claim relative to the prior art. Applicant respectfully submits that the application of this standard to the independent claims presented leads to the conclusion that the recited subject matter would not have been obvious to one of ordinary skill in the art based on the applied documents.

For at least the above-noted reasons, Applicant respectfully submits that the independent claims presented herewith patentably distinguish over the applied art. Reconsideration and allowance of all claims is therefore respectfully requested.

The Jabber article cited in connection with dependent claims 6, 15 & 26 is not believed to address any of the above-noted deficiencies of Collins and Vij when applied against the independent claims. As such, and without acquiescing to the characterizations of Jabber contained in the Office Action, Applicant respectfully submits that the combination of Collins, Vij and Jabber also does not teach or suggest the subject matter of the amended independent claims presented.

All claims are believed to be in condition for allowance, and such action is respectfully requested.

If, however, any issue remains unresolved, the Examiner is requested to telephone Applicant's undersigned representative to schedule an Examiner Interview in the hope of advancing prosecution of the subject application.

Respectfully submitted,

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